



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 25, 2008

Honorable Martha Fuller Clark, Chairman
Committee on Energy, Environment and Economic Development
Room 102 Legislative Office Building
Concord, NH 03301

RE: HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on HB 777-FN-A, relative to agricultural exemptions from alteration of terrain permitting requirements and penalties for site development. The Department of Environmental Services (DES) supports this bill.

RSA 485-A:17 requires terrain alteration permits for "any person proposing to significantly alter the characteristics of the terrain in such a manner as to impede the natural runoff or create an unnatural runoff..." Terrain alteration permits are primarily required for new development projects with greater than 100,000 square feet of impact, or 50,000 square feet if the project is adjacent to protected shorelands. RSA 485-A:17, III specifically provides an exemption for "normal agricultural operations." However, the statutes are unclear as to the extent that major conversions to agriculture of forested lands by removal of trees and stumps are, or are not, considered "normal agricultural operations". The statutes are also unclear as to what other activities at agricultural sites might qualify as "normal agriculture operations". These questions were raised several years ago and, as a result, DES developed guidelines (dated March 31, 2006, copy attached) to assist property owners in making these determinations. In Paragraph 2, there is also a proposed new section, RSA 485-A:17-a, Agricultural Exemption for Alteration of Terrain, where criteria are proposed that are consistent with these guidelines, as well as language contained in new terrain alteration rules that are about to be proposed.

Paragraph 2 also includes a proposed new section RSA 485-A:17-b, Site Development Penalty. The intent of this section is to provide disincentive, by assessment of penalties, for land owners who convert forest land to agricultural land, under an agricultural exemption for alteration of terrain, to then develop the property for purposes other than agriculture or forestry in a relatively short time frame (less than 6 years). We are unaware of any specific situations where this has recently occurred. Therefore, we anticipate that this proposed change would have minimal application but could provide greater assurance that converted land is used for agricultural purposes.

Thank you for the opportunity to comment on this important legislation. If you have any questions or need additional information, please contact Ridgely Mauck, Alteration of Terrain Program Supervisor, at 271-2303 or me at 271-2958.

Sincerely,

Michael J. Walls, Asst. Comm.
for Thomas S. Burack
Commissioner

Attachment

cc: Representative Phinizy

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Water Quality Engineering

March 31, 2006

Clarification of Department of Environmental Services Requirements for Projects Involving Conversion to Agriculture from Woodlands (Limited Exemption Criteria)

RSA 485-A:17, II states that "normal agricultural operations shall be exempt" from the permitting requirements but does not precisely define "normal agricultural operations." DES has operated in recent years under a policy of requiring all agricultural land conversions (such as from wooded land to agriculture) of over 100,000 square feet (50,000 square feet in the protected shoreland) to apply for and obtain a permit for alteration of terrain activities. This interpretation came on the heels of some serious issues that occurred relative to past environmental violations of erosion and wetlands standards during a few agricultural land conversions.

Based on recent experience, it has become clear that certain types of agriculture-related land conversion or change of use projects are clearly intended for permitting under RSA 484-A:17 (copy below) while other less intrusive projects, while still subject to water quality standards and best management practice requirements, may not require permitting under RSA 485-A:17. *DES has concluded that some projects involving removal of trees and stumps from lands that are not wetlands, for purposes of conversion to agriculture may be considered "normal agricultural operations" and, therefore, are exempt from the permitting requirements of RSA 485-A:17 requirements. Thus, detailed permit applications for alteration of terrain for these limited types of projects are not required. Projects that qualify for the agriculture exemption include those where:*

- *Trees are being removed and stumped (only);*
 - *The project does not "significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff" (RSA 485-A:17, I). DES interprets this to mean by causing significant contour changes by filling, grading and/or terracing; and*
 - *The project is necessary for a bonafide agricultural operation as defined in RSA 21:34-a and the project is not intended as a phase towards site development for a different purpose that would be covered by the alteration of terrain requirements.*
- Exempt projects clearly do not include those that involve:*
- *Contour changes created by significant filling, grading, and topsoil removal;*
 - *The erection of buildings; or*
 - *The construction of roads.*

The following requirements are also always applicable to a project whether permitted by actual permit, permit by notification, or exempt:

- *Best Management Practices (BMPs) for Erosion Control on Timber Harvesting Operations in New Hampshire, 2001.*
- *If in wetlands, agriculture projects need to be done in accordance with RSA 482-A and may be able to use the Minimum Impact Expedited Agriculture Application if the project qualifies as minimum under Wt 303.04(u). In these cases, the*

County Conservation District prepares a plan for the applicant to sure that their project is done in accordance with the standards of the "*Best Management Wetland Practices for Agriculture*", New Hampshire Department of Agriculture, Markets and Food, dated July 16, 1993.

- Additionally, the applicant may qualify for Permit By Notification or a "Notification of Forest Management or Timber Harvest Activities Having Minimum Wetlands Impact" rather than submission of a complete wetlands permit application depending on the nature and magnitude of timber harvesting.
- The Shoreland Protection Act (RSA 483-B) requirements for projects within the protected shoreland area.
- RSA 485-A:22 and Env Ws 415 requirements for water quality standards, to ensure that the project does not result in any water quality violations.

Guidance for all of these programs and requirements can be obtained on the Department of Environmental Services at www.des.state.nh.us.

485-A:17 Terrain Alteration. –

I. Any person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff, shall be directly responsible to submit to the department detailed plans concerning such proposal and any additional relevant information requested by the department, at least 30 days prior to undertaking any such activity. The operations shall not be undertaken unless and until the applicant receives a permit from the department. The department shall have full authority to establish the terms and conditions under which any permit issued may be exercised, giving due consideration to the circumstances involved and the purposes of this chapter, and to adopt such rules as are reasonably related to the efficient administration of this section, and the purposes of this chapter. Nothing contained in this paragraph shall be construed to modify or limit the duties and authority conferred upon the department under RSA 482 and RSA 482-A.

II. The department shall charge a fee for each review of plans, including project inspections, required under this section. The fee shall be based on the extent of contiguous area to be disturbed. Except for RSA 483-B:9, the fee for plans encompassing an area of at least 100,000 square feet but less than 200,000 square feet shall be \$500. For the purposes of RSA 483-B:9, the fee for plans encompassing an area of at least 50,000 square feet but less than 200,000 square feet shall be \$500. An additional fee of \$200 shall be assessed for each additional area of up to 100,000 square feet to be disturbed. No permit shall be issued by the department until the fee required by this paragraph is paid. All fees required under this paragraph shall be paid when plans are submitted for review and shall be deposited in the treasury as unrestricted funds.

III. Normal agricultural operations shall be exempt from the provisions of this section. The department may exempt other state agencies from the permit and fee provisions of this section provided that each such agency has incorporated appropriate protective practices in its projects which are substantially equivalent to the requirements established by the department under this chapter.

IV. Timber harvesting operations shall be exempt from the fee provisions of this section. Timber harvesting operations shall be considered in compliance with this section and shall be issued a permit by rule provided such operations are in accordance with procedures prescribed in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, published by the department of resources and economic development, and provided that the department of revenue administration's intent to cut form is signed.

Source. 1989, 339:1. 1992, 157:3. 1996, 228:106, 109, eff. July 1, 1996. 2003, 224:5, eff. July 1, 2003. 2005, 32:1, eff. July 9, 2005.